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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/003,011	11/01/2001	Roy K. Greenberg	PA-5270-RFB	3255
7590 Brinks Hofer Gilson & Lione P.O. Box 10395 Chicago, IL 60610			EXAMINER PHILOGENE, PEDRO	
			ART UNIT 3733	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/10/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/003,011	GREENBERG ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Pedro Philogene	3733	

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 01 December 2006.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1,3-20 and 22 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,3-20,22 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 is indefinite for depending on a cancelled claim.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2,4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boyle et al. (6,695,813) in view of Cathcart et al. (5,681,347) in view of Braunschweiler et al. (5,484,444).

With respect to claim 1, Boyle et al., disclose a medical grasping device comprising: an elongate control member (18,520) having an atraumatic distal tip section, as best seen in FIG.1, and a proximal end portion; the elongate control member further including a grasping portion (14,16,530) proximal the distal tip section; an outer sheath (46,48) with a passageway therethrough, as best seen in FIG.2, surrounding the elongate control member and relatively movable with respect thereto.

Although Boyle et al teach of a control assembly, as set forth in column 24, lines 19-45, it is noted that Boyle et al., did not teach of a control assembly as claimed by applicant. However, in a similar art, Cathcart et al., evidences such a control assembly to enable the control deployment and displacement of a device.

Therefore, given the teaching of Cathcart et al., it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the control assembly, as taught by Cathcart et al, in the device of Boyle et al., to urge the medical grasping device from a retracted to an expanded position.

Furthermore, it is noted that the above combination of references did not teach of an elongated control member that is a flexible cannula defining a lumen extending therethrough into which a guide wire is receivable and movable with respect thereto; as claimed by applicant. However, in a similar art, Braunschweiler et al evidence the use of such an elongated member with cannula and guide wire to ensure that reliable operation is achieved and therefore guaranteed the greatest possible operational reliability.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Boyle/cathcart et al, as taught by Braunschweiler et al., to ensure that reliable operation is achieved and therefore guaranteed the greatest possible operational reliability.

With respect to claims 4-7, the above combination of references teaches all the limitations, the outer sheath being flexible and kink-resistant, as set forth in column 11, lines 42-67, column 12, lines 1-33, the atraumatic distal tip section tapers to a blunt and

rounded tip; as best seen at the end of the control member 18, the control assembly including an actuation section that is grippable for reciprocal movement along the handle, as set forth in column 6, lines 3-25 of Cathcart et al., and a connecting block (25) as set forth in column 6, lines 3-25 of Cathcart et al.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Boyle et al. (6,695,813) in view of Cathcart et al. (5,681,347) in view of Braunschweiler et al. (5,484,444) in view of Gunther et al. (5,330,484).

With respect to claim 3, it noted that the above combination of references did not teach of a hemostatic seal between the sheath and the elongate control member; as claimed by applicant. However, in a similar art, Gunther et al evidence the use of a hemostatic seal to hold the legs of a grid body.

Therefore, given the teaching of Gunther et al., it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Boyle/Cathcart/Braunschweiler et al., as taught by Gunther et al to provide a hemostatic seal between the sheath and the elongate control member to hold the legs of the grasping portion.

Claims 8-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boyle et al. (6,695,813) in view of Cathcart et al. (5,681,347) in view of Hillstead (5,098,440) in view of Braunschweiler et al. (5,484,444).

With respect to claims 8-21, it is noted that the above combination of references teaches all the limitations, except for wire loops that are substantially circular upon full deployment, as claimed by applicant. However, in a similar art, Hillstead evidences the

use of wire loops that are circular upon full deployment and having side sections that overlap and touch the vessel wall to engage the object to be retrieved with a greater force.

Therefore, given the teaching of Hillstead, it would have been obvious to one having ordinary skill in the art, at the time the invention was made to incorporate the design of the grasping device of Hillstead in the grasping device of Boyle/Cathcart et al. to engage the object to be retrieved with a greater force.

Furthermore, it is noted that the above combination of references did not teach of an elongated control member that is a flexible cannula defining a lumen extending therethrough into which a guide wire is receivable and movable with respect thereto; as claimed by applicant. However, in a similar art, Braunschweiler et al evidence the use of such an elongated member with cannula and guide wire to ensure that reliable operation is achieved and therefore guaranteed the greatest possible operational reliability.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Boyle/cathcart et al, as taught by Braunschweiler et al., to ensure that reliable operation is achieved and therefore guaranteed the greatest possible operational reliability.

***Response to Amendment***

Applicant's arguments, see Remarks, filed 12/1/06, with respect to the rejection(s) of claim(s) 1-20,22 under 103 have been fully considered and are

persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Braunschweiler et al.

In addition, the finality of the last Office Action has been withdrawn. As to claims 1 and 15 the loops of Hillstead are capable of overlapping with adjacent ones and the loops that are capable of joining with the elongated control member, since the loops are flexible.

***Conclusion***

A shortened statutory period for reply to this action is set to expire THREE MONTHS from the mailing date of this action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Pedro Philogene  
January 7, 2007

*Pedro Philogene*  
PÉDRO PHILOGENE  
PRIMARY EXAMINER